

OFFICE OF THE ATTORNEY GENERAL



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JIMMY EVANS
ATTORNEY GENERAL
STATE OF ALABAMA

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ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 242-7300

Honorable Tom Purvis
Sheriff, Mobile County
P. O. Box 113
Mobile, AL 36601-0113

Depositories - Law Enforcement
- Funds - Forfeiture - Interest

1. Currency seized in a violation of the Controlled Substances Law and held pursuant to Code of Alabama 1975, § 20-2-93, may be deposited in an interest-bearing bank account pending forfeiture proceedings.
2. The disposition of the interest earned when seized monies are deposited in a bank account pending forfeiture proceedings must be determined by the court's order concerning the forfeiture of such monies.

Dear Sheriff Purvis:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION 1

Can currency seized in a violation of the Controlled Substances Act and held

pursuant to Code of Alabama 1975, § 20-2-93 be deposited in an interest-bearing account in a federally insured bank and held in trust pending orders and judgment from the court having jurisdiction over forfeiture proceedings?

FACTS AND ANALYSIS

Code of Alabama 1975, § 20-2-93 addresses the forfeiture of conveyances used in the transportation of a controlled substance and those conveyances intended for such use. Singleton v. State, 396 So.2d 1050 (Ala. 1981). Among those items subject to forfeiture under § 20-2-93(a) are:

"(4) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of any law of this state; all proceeds traceable to such an exchange; and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any law of this state concerning controlled substances; . . ."

Section 20-2-93(b) provides that the property subject to forfeiture may be seized by law enforcement agencies upon process issued by a court having jurisdiction over the property. It also provides certain instances where seizure may be made without process.

It is provided at § 20-2-93(d):

"(d) Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the state, county or municipal law enforcement agency subject only to the orders and judgment of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the state, county or municipal law enforcement agency may:

- "(1) Place the property under seal;
- "(2) Remove the property to a place designated by it;
- "(3) Require the state, county or municipal law enforcement agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law; and
- "(4) In the case of real property or fixtures, post notice of the seizure on the property, and file and record notice of the seizure in the probate office."

Where property is seized in the exchange for a controlled substance in violation of the law, it may be removed to a place designated by the law enforcement agency or to an appropriate location for disposition in accordance with the law. Thus, under § 20-2-93 a sheriff may designate that money seized under such circumstances is to be placed in a interest-bearing federally insured bank account pending forfeiture proceedings. In fact, such placement of seized currency has been encouraged. United States v. Kingsley, 851 F.2d 16 (1st Cir. 1988). Furthermore, courts take judicial notice that money is of a commercial value equal to that imported by its face. Williams v. State, 49 Ala.App. 74, 268 So.2d 855 (1972). Therefore, generally when the forfeiture proceedings are held, it is not necessary to present the exact currency seized. However, there may be certain instances where the money seized must be presented as evidence in the trial. In such instances the money should not be placed in a bank account, but safely and properly kept for use as evidence.

It must be stated that access to the bank account in which such funds are placed should be strongly restricted and thorough records should be carefully kept regarding such funds.

CONCLUSION

Currency seized in a violation of the Controlled Substances Law and held pursuant to Code of Alabama 1975, § 20-2-93, may be deposited in an interest-bearing bank account pending forfeiture proceedings.

QUESTION 2

If such currency may be deposited in an interest-bearing account, what disposition should be made of the interest earned?

FACTS AND ANALYSIS

The disposition of the seized property is determined in the forfeiture proceedings. This would apply to any interest earned on monies which have been seized and subject to the forfeiture provisions of the Controlled Substances Law. Thus, the disposition of the interest earned when seized monies are deposited in an interest-bearing account must be determined by the court in its order in the forfeiture proceedings.

CONCLUSION

The disposition of the interest earned when seized monies are deposited in a bank account pending forfeiture proceedings must be determined by the court's order concerning the forfeiture of such monies.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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